MT LEGISLATIVE HISTORY

Chapter 455 19 75

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H. Committee on Natural Resources

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S. Committee on Public Health, Welfare & Safety

Hearing Date(s) Mar 20 ✓ C

Mar 25 ✓ C

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Mar 25 ✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

House BILL NO. 370

INTRODUCED BY Mercy by request of Department of Health and Environmental Sciences

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER POLLUTION CONTROL LAWS TO CONFORM WITH FEDERAL REQUIREMENTS, TO IMPROVE ENFORCEMENT PROCEDURES, AND TO PROVIDE FOR USER CHARGES FOR INDUSTRIAL AND OTHER USERS OF PUBLIC SEWAGE TREATMENT SYSTEMS; AMENDING SECTIONS 69-4801, 69-4802, 69-4806, 69-4807.1, 69-4808.2, 69-4809.1, 69-4809.2, 69-4820, 69-4820.1, 69-4822, 69-4823, 69-4825, AND 69-4826, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4801, R.C.M. 1947, is amended to read as follows:

"69-4801. Public policy of the state. (1) It is the public policy of this state to:

(a) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(b) provide a comprehensive program for the prevention, abatement, and control of water pollution.

(2) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream as long as the minimum treatment requirements established under this chapter are met. "Natural" refers to conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams at the effective date of this act are "natural.""

Section 2. Section 69-4802, R.C.M. 1947, is amended to read as follows:

"69-4802. Definitions. Unless the context requires otherwise in this chapter:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present;

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead

animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances ~~that may pollute state waters;~~ resulting from industrial, municipal, or agricultural activities;

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health;

(5) "Pollution" means contamination, or other alteration of the physical, chemical, or biological properties of any state waters, which exceeds that permitted by Montana water quality standards, including, but not limited to, standards relating to change in temperature, taste, color, turbidity, or odor~~;~~ or discharge of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is ~~permitted by Montana water quality standards~~ authorized under the pollution discharge permit regulations of the board is not "pollution" under this chapter.

(6) "Sewerage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point;

(7) "Treatment works" means works installed for

treating or holding sewage, industrial wastes, or other wastes;

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes, and includes sewerage systems and treatment works;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters;

(10) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity;

(11) "Council" means the state water pollution control advisory council provided for in section 82A-607;

(12) "Board" means the board of health and environmental sciences, provided for in section 82A-605;

(13) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6;

(14) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health;

(15) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe,

ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(16) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source;

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(18) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constitutents which are discharged into state waters."

Section 3. Section 69-4806, R.C.M. 1947, is amended to read as follows:

"69-4806. Pollution unlawful--permits. It is unlawful to:

(1) cause pollution as defined in section 69-4802 (5), R. C. M. 1947, of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(2) carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges to any state waters; or

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes to any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters; or

(3) violate any limitation imposed by a current permit."

Section 4. Section 69-4807.1, R.C.M. 1947, is amended to read as follows:

"69-4807.1. Denial, modification, suspension, and revocation of permit--notice--hearing--effective date. (1) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder, and he may request a hearing before the board, in the manner stated in section 13 [69-4820] of this act, for the purpose of petitioning the board to reverse or modify the action of the department. Such hearing shall be held within thirty (30) days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. Modification of a permit shall be effective

thirty (30) days after receipt of notice by the holder, unless the department specifies a later date, if the holder does not request a hearing before the board. If the holder does request a hearing before the board, no order modifying his permit shall be effective until twenty (20) days after he has received notice of the action of the board. This subsection does not apply to any modification made in permit conditions at the time of reissuance but only to those modifications made in existing permits during their terms.

(2) If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately, if the department finds that the violation is likely to continue and will cause pollution the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in section 13 [69-4820] of this act and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately, unless the board directs otherwise."

Section 5. Section 69-4808.2, R.C.M. 1947, is amended to read as follows:

"69-4808.2. Duties of board. (1) The board shall:

(a) Establish and modify the classification of all waters in accordance with their present and future most beneficial uses.

(b) Formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention.

(c) Review from time to time, at intervals of not more than three (3) years, established classifications of waters and standards of water purity and classification, and:

(i) The classifications, standards, and rules which have been adopted by the state water pollution control council under section 69-4813 are, without necessity of a hearing, initially adopted by the board.

(ii) In revising classifications or standards or in adopting new classifications or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted by the state water pollution control council under section 69-4813.

(iii) The board shall require that any state waters, whose existing quality is ~~better~~ higher than the established water quality standards, ~~as--of--the--date--on--which--the standards--become--effective~~ be maintained at that high

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quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

(iv) The board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increased source of pollution to high quality waters, referred to in subsection (1) (c) (iii), to provide the degree of waste treatment necessary to maintain that existing high water quality.

(d) Advise, consult, and co-operate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

(e) Adopt rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems.

(f) Adopt rules governing the issuance, denial, modification, or revocation of permits, and:

(i) The rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that:

(ii) The rules may allow the issuance of a temporary permit under which pollution may result, ~~for a period no longer than three (3) years and subject to no extension,~~ if the department ~~finds that the issuance of a permit is proper for obtaining compliance with the applicable standards,~~ insures that such permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(iii) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and

~~(iv) A person introducing a new source or increased source of sewage, industrial waste, or other wastes as defined in section 69-4802 (1), (2), and (3), to waters and tributaries of waters classified as A open B 1 or higher by the board shall be required to install and maintain the highest and best degree of treatment works necessary to maintain adequately this classification, as defined in section 69-4802 (7) before the issuance of a permit by the department.~~

(g) Hold hearings necessary for the proper

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administration of this chapter or, in the case of permit issuance hearings, delegate this function to the department.

(h) Adopt rules for the administration of this chapter.

(i) Adopt pretreatment standards for waste-water discharged into a municipal disposal system, adopt effluent standards as defined in section 69-4802~~(20)~~ (18), adopt toxic effluent standards and prohibitions, and establish standards of performance for new point source discharges.

(2) The board may:

(a) accept loans and grants from the federal government and other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes."

Section 6. Section 69-4809.1, R.C.M. 1947, is amended to read as follows:

"69-4809.1. Duties of department. (1) The department shall:

(a) Issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes to state waters; consistently with rules made by the board;

(b) Examine ~~and approve or disapprove~~ plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(c) Clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged;

(d) Collect and furnish information relating to the prevention and control of water pollution;

(e) Conduct or encourage necessary research and demonstrations concerning water pollution;

(f) Issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them.

(g) Take such actions as are authorized or required under section 69-4820.1 to insure that the terms and conditions of issued permits are complied with and to insure that violations of this chapter are appropriately prosecuted."

Section 7. Section 69-4809.2, R.C.M. 1947, is amended to read as follows:

"69-4809.2. Power to inspect and monitor--authority. (1) In order to carry out the objectives of this act and to effectively monitor the discharge of sewage, industrial wastes and other wastes into state waters, the department may require the owner or operator of any point source, or the owner or operator of any facility that discharges into a

municipal sewer system and to which pretreatment standards, promulgated under this chapter apply, to:

(a) establish and maintain records;

(b) make reports;

(c) install, use and maintain monitoring equipment or methods, including biological monitoring techniques;

(d) sample effluents using specified monitoring methods at designated locations and intervals;

(e) provide other information as may be reasonably required by the department.

(2) The authorized representative of the department, ~~upon presentation of his credentials,~~ may at reasonable times enter upon any public or private property to:

(a) investigate conditions relating to pollution of state waters or violations of permit conditions;

(b) and have access to and copy any records required under this act;

(c) inspect any monitoring equipment or method required under subsection (1)(c); and

(d) sample any effluents which the owner or operator of such source is required to sample under that subsection.

(3) Any records, reports, or information obtained under this section shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards."

Section 8. Section 69-4820, R.C.M. 1947, is amended to read as follows:

"69-4820. Violation of chapter or rule--notice to violator--hearing before board--notice, procedure, order, rehearing. (1) When the department has reason to believe that a violation of this chapter or a rule made under it has occurred, it ~~shall~~ may have written notice served personally or by mail on the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action which the department requires, and the time within which the action is to be taken. For the purposes of this chapter, service by mail is complete on the date of mailing.

(2) In a notice given under subsection (1) of this section, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges made against him. The hearing shall be held no sooner than fifteen (15) days after service of the notice, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(3) If the department does not require an alleged

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violator to appear before the board for a public hearing, he may request the board to conduct the hearing. The request shall be in writing and shall be filed with the department no later than thirty (30) days after service of a notice under subsection (1) of this section. If a request is filed, a hearing shall be held within a reasonable time.

(4) If a hearing is held under this section, it shall be public and shall, if the board considers it practicable, be held in a county in which the violation is alleged to have occurred.

(5) After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board may issue an appropriate order for the prevention, abatement, or control of pollution. It shall state the date or dates by which a violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. The alleged violator may petition the board for a rehearing, on the basis of new evidence, which petition the board may grant for good cause shown.

(6) In addition to or instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under section 69-4823."

Section 9. Section 69-4820.1, R.C.M. 1947, is amended to read as follows:

"69-4820.1. Additional enforcement remedies. (1) In addition to all other remedies created by this act, the department is authorized to take appropriate enforcement action on its own initiative to:

(a) prevent, abate, and control the pollution of state waters;

(b) prevent, abate, and control any violation of a condition or limitation imposed by a permit issued under section 69-4806, R.C.M. 1947;

(c) prevent, abate, and control any violations of regulations relating to pretreatment standards.

(2) ~~Any~~ In furtherance of subsection (1) of this section, any person violating a any condition, limitation, standard or other requirement established pursuant to this ~~section~~ chapter may be served with a compliance order issued by the department. Such order must specify the condition, limitation, standard or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard or other requirement that has been violated. The compliance order issued under this section shall be personally served by an authorized employee of the department.

(3) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for any violation which would be subject to a compliance order under subsection (2) of this section. Any action under this subsection may be commenced in the district court of any county in which the defendant is located or resides or is doing business, and the court shall have jurisdiction to restrain such violation and to require compliance.

(4) Any person found to be in violation of a condition, limitation, standard or other requirement established pursuant to this section shall be subject to the penalty provisions of section 69-4823, R.C.M. 1947.

(5) For the purpose of this subsection, the term "person" shall mean, in addition to the definition contained in section 69-4802, R.C.M. 1947, any responsible corporate officer."

Section 10. Section 69-4822, R.C.M. 1947, is amended to read as follows:

"69-4822. Confidentiality of records. Any information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, ~~tend--to~~

~~weaken-his-competitive-position-shall-be-confidential-unless he--expressly--agrees--to-its-publication-or-availability-to the-general-public-or-unless-such-information-is--introduced as--evidence-in-a-hearing-before-the-board~~ reveal methods or processes entitled to protection as trade secrets, shall be maintained as confidential if it is requested by the owner or operator and if it is found by the board to be a trade secret. Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered ~~confidential--except---that---the---party---supplying---the information--to--the--board--may--apply--to--the--board--for confidential-status-for-the-information-so-supplied,-and-the board--shall--determine--that---the---disclosure---of---said information---is---in--the--public--interest--prior--to--the disclosure-to-the-public-of-said-information.~~ The board may use any information in compiling or publishing analyses or summaries relating to water pollution, if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section."

Section 11. Section 69-4823, R.C.M. 1947, is amended to read as follows:

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"69-4823. Penalties for violation of provisions, rule, permit, effluent standard, or order--purpose and construction of chapter. (1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this act shall be ~~guilty--of an--offense-and~~ subject to a civil penalty not to exceed ten thousand dollars ($10,000). Each day of violation constitutes a separate offense.

(2) A person who willfully or negligently violates section 69-4806, R.C.M. 1947, or any pretreatment standard established pursuant to this act is guilty of an offense and subject to a fine not to exceed twenty-five thousand dollars ($25,000) per day of violation or by imprisonment for not more than one (1) year or both. Following an initial conviction under this subsection, subsequent convictions shall subject a person to a fine of not more than fifty thousand dollars ($50,000) per day of violation, or imprisonment for not more than two (2) years, or both.

(3) Action under subsection (1) of this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy. The department shall institute and maintain any enforcement proceedings in the name of the state.

(4) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the

pollution of state waters. This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(5) Fines collected shall be deposited to the state general fund.

(6) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this act or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this act shall upon conviction be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment for not more than six (6) months, or both.

(7) In a civil action initiated by the department under this act, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation, and any expense incurred by the state in removing, correcting or terminating any of the

adverse effects upon water quality resulting from the unauthorized discharge of pollutants."

Section 12. Section 69-4825, R.C.M. 1947, is amended to read as follows:

"69-4825. Injunctions. The department may bring an action for an injunction against the continuation of an alleged violation ~~which-has-been-the-basis-of-suspension-or revocation~~ of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under section 69-4824 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction, if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction."

Section 13. Section 69-4826, R.C.M. 1947, is amended to read as follows:

"69-4826. Action by other parties. A person, association, corporation, or agency of the state or federal government may apply to the department protesting a violation of this chapter. The department shall make an investigation and make a written report to the person, association, corporation, or agency which made the protest.

If a violation is established by the investigation of the department, appropriate enforcement action shall be taken."

Section 14. There is a new R.C.M. section that reads as follows:

Rates and charges to meet costs of treatment works -- use of funds -- enforcement. (1) A municipality shall adopt a system of charges and rates to assure that each recipient of treatment works services within the municipality's jurisdiction or service area will pay its proportionate share of the costs of operation, maintenance, and replacement of any treatment works facilities or services provided by the municipality.

(2) A municipality may require industrial users of its treatment works to pay to the municipality that portion of the cost of construction of the treatment works which is allocable to the treatment of such industrial user's wastes. The department of health and environmental sciences may determine whether the payment required of the industrial user for the portion of the cost of the construction of the treatment works is properly allocable to the treatment of the industrial user's wastes.

(3) A municipality may retain the amounts of the revenues derived from the payment of costs by industrial users of its treatment works services and expend such revenues, together with interest thereon, for:

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(a) repayment to applicable agencies of government of any grants or loans made to the municipality for construction of the treatment works; and

(b) future expansion and reconstruction of the treatment works; and

(c) other municipal purposes.

(4) A municipality shall keep records, financial statements and books regarding its rates and charges and amounts collected on account of its treatment works and how such revenues are allocated. The department may inspect such records, financial statements and books, audit them, or cause them to be audited, at such intervals as deemed necessary.

(5) In the event a municipality fails, neglects or refuses when required by the department to adopt the system of charges and rates authorized by this section, the commission may adopt a system of charges and rates as provided for in subsection (1) of this section and collect, administer and apply such revenues for the purposes of subsection (3) of this section.

(6) In lieu of proceeding in the manner set forth in subsection (5) of this section, the commission may institute proceedings at law or in equity to enforce compliance with, or restrain violations of this section.

Section 15. There is a new R.C.M. section that reads

as follows:

Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or, if applicable, the department shall consider the strength, volume, types and delivery flow rate characteristics of the waste; the nature, location and type of treatment works; the receiving waters; and such other factors as deemed necessary.

Section 16. There is a new R.C.M. section that reads as follows:

Rules. The department may adopt, modify or repeal rules for the administration and implementation of sections [14 and 15 of this act].

-End-

__ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action
HJR 21	Requests the Federal Energy Administration to take immedi-te action in properly allo-cating crude oil imported from Canada to refineries here	Jan. 21	Williams	Jan. 28	DO PASS AS AMENDED
HJR 17	Requests comm. on priorities to assign standing committee to study feasibility of pro-grams to preserve and protect prime agric. and rec. lands.	Jan. 22	VINCENT	Jan. 28	DO PASS
HB 341	An act amending the open space land act and providing for conservation easements.	Jan. 27	SHELDEN	Feb. 1	DO PASS AS AMENDED
HB 349	An act to amend the Montana strip mining and rec. act to provide for the protec-tion of certain agricultural lands on valley floors, etc.	Jan. 27	Day	Feb. 4	DO PASS AS AMENDED
HB 352	An act to make unlawful the use of junked motor vehicles for flood control of a stream or for reinforcement of the banks of a stream.	Jan. 27	Dussault	Feb. 1	DO PASS AS AMENDED
HB 370	An act to revise the water pollution control laws to conform with federal require-ments, etc.	Jan. 28	Meloy	Feb. 6	DO PASS AS AMENDED

The Natural Resources Committee convened at 10:30 a.m. on February 6, 1975, in room 437, with Chairman Bradley presiding and all present for a hearing on the following bills:

HJR 48 REP. GUNDERSON, the chief sponsor, said this resolution was a request for a soils inventory. He said he knew there has been a continuing soils survey for the past thirty years, but he hoped this resolution could get the Department of Natural Resources to coordinate the work of the other agencies, and so speed up a complete soils inventory. Mr. Gunderson felt each of these agencies probably had funding for this purpose, and so financing would be available.

JACK ROGERS, USDA Soil Conservation Service, stated that as an agency they are in favor of the concept of the resolution; but it wrongly infers that nothing has been done to date. He showed a sample book of soil surveys and said a lot of work has been done, although a lot is left to do. He passed out copies of suggested amendments which is exhibit 1.

C. R. DRAPER, IGR, was the next proponent speaker and his testimony is exhibit 2.

JOHN L. DELANO, Montana Railroad Association, stated they favor the bill. He left three suggested amendments which are exhibit 3.

There were no opponents. Rep. Gunderson said in his rebuttal that he was especially interested in this soils survey because of the problem of saline seep.

Questions from the committee brought out that due to a lack of soil scientists and other personnel this is a slow and expensive job.

Also signing as supporting the measure was:
Frank J. Schledorn, USDA Soil Conservation Service.

HB 370 REP. MELOY, the bill's sponsor, stated this bill adds amendments and additions to Montana's Water Pollution Act so the act will comply with federal requirements and strengthen the department's regulatory authority.

RICHARD KLINGER, Department of Health, went through the bill with the assistance of DONALD ZOLLMAN, Department of Health, explaining the need of each change in the law. He also submitted some additional amendments which serve as exhibit 4. He also introduced DON WILLEMS, Department of Health, and said he would be also available to answer any questions.

DARLENE GROVE, League of Women Voters, was the next proponent and her testimony is exhibit 5.

BILL STERNHAGEN, Anaconda Company, had copies of proposed amendments and these serve as exhibit 6. He went through his proposed amendments and asked if the things he had pointed out by the amendments were required by federal law, he said he'd like to know which were

and which weren't. He questioned of what value the state legislature is if the federal government tells them everything to do. He stated they are in favor of the bill with Anaconda's amendments. He also felt that cost should be considered--in this time of recession extra costs should not be put on industry and production. Mr. Sternhagen passed out copies of the Gold Medal Award, which is exhibit 7, that the Anaconda Company had received.

Questions were asked by the committee.

The EQC report on this bill is exhibit 8.

HB 433 REP. RICHARDS, the chief sponsor, stated this bill would prohibit any nuclear fission or fusion power plants to be located in Montana or stored here. He passed out a sheet of suggested amendments and this is exhibit 9. He said a study had selected two sites as potential nuclear plant sites in Montana--one east of Thompson Falls and one near Troy. He passed around a map of Montana with these sites circled. This study by Dames and Moore is exhibit 10. Rep. Richards passed out copies of newspaper articles, exhibit 11, dealing with the dangers of nuclear plants and the storage of waste nuclear material, and discussed them. He distributed a fact sheet, "Dangers of Nuclear Power," exhibit 12, which are excerpts from different magazines and discussed them. He stressed that it would take 500,000 years for this waste material to become harmless; and he asked if we wanted our children and our children's children many times over to have to worry about keeping this material safely contained.

OPPONENTS
GENE PHILLIPS, Pacific Power and Light, stated they have no present plans to build such a plant in Montana. He quoted from a speech made by Mike McCormick in Congress. This speech stressed that our total energy consumption is on the increase and will double before too many years, and a lion's share will be from nuclear fission. It stated that we can't put all our hopes on solar and geothermal or the hope of finding enough gas or oil. It stated that about the year 2000 the gas will be gone and we will be dependent on coal and nuclear fission. The speech said nuclear energy is the cleanest source available. It also said there are 65 nuclear power plants producing 2% of the nation's electricity and should be producing 1/4 by 1980. He said the safety record was good.

JACK MOORE, REP., stated he felt this would be one of the best sources of energy available. He said there was no way that Montana could stop the transportation of radioactive wastes through the state--it belongs to the Atomic Energy Commission and they must move it in the most direct way possible.

REP. RICHARDS in his rebuttal said the bill just states the material will not be stored here or plants set up. He said 55 of the nuclear power plants are not operating because of safety factors. There are still many problems, he stressed, that need to be worked out. He

Bill Kinyon
Ex. 4

PROPOSED AMENDMENTS TO HOUSE BILL 370

1) On page 3, line 20, "regulations" should be changed to "rules".

2) On page 16, line 24, "employee" should be changed to "representative".

3) On page 22, line 6, "shall" should be changed to "may".

4) On page 23, line 17, "commission" should be changed to "board".

5) On page 23, line 22, "commission" should be changed to "department".

7) Section 16 on page 24, lines 10 through 14, should be deleted. The board has the power to make rules already under 69-4808.2(h).

6) On p. 24, line 5, "department" should be changed to "board"

8) In sections 14+15, wherever "municipality" appears it should be followed by "or other entity operating a public sewage system."

9) On p. 19, line 8, "offense" should be changed to "violation."

Ex.6

AMENDMENTS TO HOUSE BILL 370

1. Insert before the word "ANY" on page 18, line 8, the following: "HOWEVER, SUCH FINDING SHALL BE SUBJECT TO APPEAL TO THE COURTS."

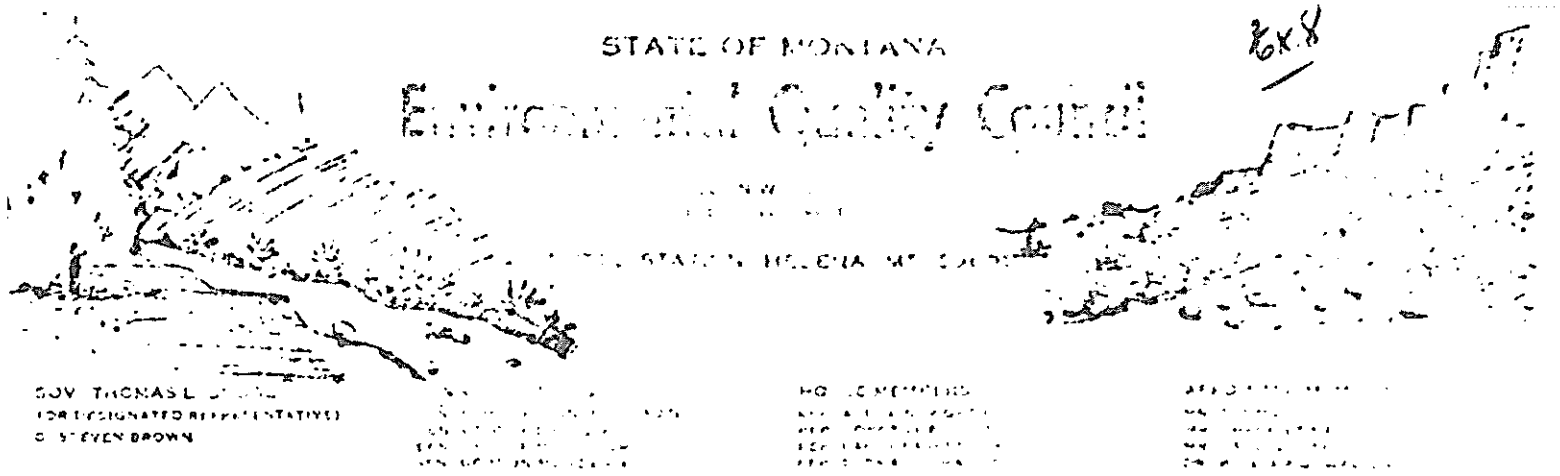
2. Amend to re-establish the dashed out wording on page 18, lines 13 to 18.

3. Amend to re-establish the dashed out wording on page 13, line 12.

4. Amend to delete the underlined words on page 16, line 4.

5. Amend to make reasonable all penalty provisions on page 19.

- - -



STATE OF MONTANA

Environmental Quality Council

February 5, 1975

Legislative Report For: House Natural Resource Committee

Prepared By: Legislative Unit, Environmental Quality Council

HOUSE BILL 370

Chapter 48 of Title 69, R.C.M. 1947 contains the statutory authority under which the Department of Health and Environmental Sciences administers Montana's water pollution control programs. Many aspects of that program come under the auspices of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1251 et seq.) and federal regulations promulgated pursuant to that Act. Any revisions in Montana's water pollution program must therefore comply with federal requirements. This report will discuss briefly the effects of the proposed amendments and additions to Montana's Water Pollution Act, and relate them, where appropriate, to the federal laws and regulations.

The following amendments are simply matters of procedural clarification and involve no significant substantive changes:

p. 7, line 7-9, amending 69-4807.1(1)
p. 8 lines 23-25, amending 69-4808.2(1)(c)(iii)
p. 11, lines 1-2, amending 69-4808.2(1)(g)
p. 11, line 22, amending 69-4809.1(1)(b)
p. 12, lines 13-17, amending 69-4809.1(1)(g)
p. 13, lines 14-15, amending 69-4809.2(2)(a).

These amendments either remove ambiguities, eliminate redundant language or provisions, streamline procedures, or clarify duties or responsibilities.

Other amendments are intended to strengthen the Department's regulatory authority:

p. 2, lines 2-3, amending 69-4804(2); strengthens the protection of water quality by guaranteeing that the minimum requirements established elsewhere in the act must be met, regardless of the natural state of the stream.

p. 2, lines 7-8, amending 69-4804(2); strenghtens the protection of water quality by indicating that unreasonable operation of dams will not be considered a "natural" condition.

p. 2, line 25, p. 3 lines 1-4, amending 69-4802(3); adds several items to the definition of "other wastes", thus expanding the scope of 69-4806(b), 69-4808.2(1)(e), 69-4809.2(1). This amendment also changes the "catch-all" from "all other substances that may pollute state waters," to "all other substances resulting from industrial, municipal, or agricultural acitivies." The effect of this change is unclear. The amendment seems to exclude from the definition of "other wastes" substances which may pollute state waters, but are not specifically listed in the definition, and are derived from sources other than industrial, municipal, or agricultural acitivies (e.g., recreational).

p. 6, lines 8-9, amending 69-4806(2); slightly broadens and clarifies the activities which are considered unlawful without a permit. Now, discharge of sewage, etc., is prohibited whether or not use is made of an "outlet for the discharge of" sewage, etc. This closes a possible loophole and is keeping with the spirit of the act.

p. 11, lines 6-7, amending 69-4808.2(1)(i); confers authority on the board to adopt toxic effluent standards, in compliance with section 307 of the FWPCA. Any regulations adopted by the board must be at least as stringent as the standards promulgated by the Environmental Protection Agency.

p. 12, lines 24-25, amending 69-4809.2(1); expands the department's authority to monitor and request reports from dischargers of pollutants, in compliance with section 308 of the FWPCA, and Title 40, Code of Federal Regulations, Part 124.61.

p. 19, line 9, amending 69-4823(2); makes a person who negligently pollutes subject to the same penalty as one who willfully pollutes. In practice, the penalties actually imposed by a court will reflect the degree of negligence. One who is slightly negligent will not be penalized to the same extent as one who deliberately pollutes. But making such penalties applicable to negligent polluters is an important strengthening of regulatory influence.

p. 21, lines 7-10, amending 69-4825; allows the department to bring an action to enjoin a violation without first suspending or revoking the violator's permit. This streamlines the enforcement procedure, as it allows the department to seek judicial action against serious violations without first going through formal permit revocation procedures which might be time-consuming. It also allows injunction actions against violators who are not permit holders.

The following amendments do not necessarily strengthen regulatory authority, and in some cases, the effect of the changes is unclear.

p. 3, lines 19-21, amending 69-4802(5); excludes from the definition of "pollution discharges authorized by the permit regulations. This creates an ambiguity in 69-4807.1(f)(i) and (ii) (pp. 9 & 10), where temporary permits to pollute are authorized. Thus nothing which is "permitted" constitutes "pollution," yet in some cases, the Department may grant a temporary permit to "pollute." This ambiguity should be cleared up, perhaps by deleting the final sentence of 69-4802(5), and amending 69-4806(1)(p.5) to read:

(1) cause pollution as defined in section 69-4802(5), R.C.M. 1947, of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters, except that any discharge authorized under the pollution discharge permit regulations of the board is not "pollution" for purposes of this section.

p. 10, lines 2-8, amending 69-4808.2(1)(f)(ii); temporary permits to pollute no longer have a three-year maximum, but their duration may be determined by the department subject to a reasonableness requirement. The language agrees with the federal regulations, 40 CFR 124.44(a)(2) and allows the department somewhat more flexibility, but the deletion of the three-year maximum seems to weaken the section.

p. 10, lines 16-24, deleting 69-4808.2(1)(j)(iv); this deletion removes the requirement that the "highest and best" treatment technology be applied to new or expanded discharges into state waters which have the highest water quality. The department must still satisfy federal regulations which establish effluent limitations, new source performance standards and require maintenance of water quality standards. (40 CFR 124.42) The FWPCA requires, by 1977, "the best practical control technology currently available," and by 1983, "the best available technology economically available." (§ 301 of FWPCA) "Highest and best" technology is a stronger requirement. Its deletion will not conflict with federal requirements, but will relax pollution control.

p. 14, line 7, amending 69-4820; this change makes department action discretionary rather than mandatory where the department is aware of a possible violation. However, the amendment to 69-4826 (p. 22, lines 1-2) makes department action mandatory when knowledge of a violation results from an investigation in response to a citizen complaint. And the amendments to 69-4820.1 (p. 16, lines 4, 12-13) clarify that the department may take action on its own

initiative to prevent, abate, and control pollution. The amendment on p. 14 allows the department more flexibility in choosing the appropriate enforcement route. The amendment on p. 22 guarantees that some action will be taken in response to a complaint. These amendments do not appear to weaken the department's enforcement procedures.

p. 17, line 25, p. 18, lines 1-8, amending 69-4822; this amendment brings the confidentiality section into conformity with the language of the federal regulations requiring public access to information (40 CFR 124.35). It should be pointed out, however, that according to the federal regulations, if the confidential information is contained in a permit application form, the department must obtain concurrence from the regional administrator of the EPA in order to keep the information confidential. The department's regulation indicate that the department shall enter into formal agreements with the regional administrator concerning procedures for...consideration of confidentiality of information..." (M.A.C. 16-2.14(10)-S14460(13)). The nature of these agreements is not set out in the department's regulations, nor are such agreements required by this section of the statute.

In addition to the amendments discussed above, there are three new sections proposed, which authorize municipalities to set up a system of rates and user charges to help pay for the construction and operation of water treatment facilities. These sections comply with the requirements of section 204(b) of the FWPCA. Municipalities must institute such user charges in order to qualify for federal grants under section 201(g) of the federal act.

The proposed new sections are somewhat stronger than the federal act in that the institution of a system of user charges is made mandatory for municipalities, and the department will institute the charges if the municipality fails to do so. Thus all municipalities are mandated to meet this portion of the federal requirements.

SB 19 The subcommittee which worked on this bill was Meloy, Barrett, Bradley and they suggested the following amendments: on page 1, line 17, following "and" insert "all information obtained from"; and on page 1, lines 21 and 22, following "Exploration" to strike "such as locating and acquiring lands for tailing".

Rep. Meloy moved the bill as amended. Motion carried with Rep. Jack Moore voting no.

HB 370 Rep. Meloy went through the subcommittee's proposed amendments.
1. Page 3, lines 3 and 4, strike "resulting from industrial, municipal, or agricultural activities" and reinsert the struck material. Rep. Meloy moved that it be adopted. Carried unanimously
2. Page 3, line 20, strike "regulations" and insert "rules". Meloy moved adoption. Motion carried unanimously.
3. Page 13, line 12, reinsert struck material. Meloy moved adoptio of this amendment. Motion carried with Day voting no and Richards
4. Page 16, line 24, strike "employee" insert "representative". Meloy moved the adoption. Motion carried (Richards gone).
5. Page 19, line 8, strike "offense" insert "violation". Meloy moved the adoption, carried unanimously.
6. Page 22, line 7, following "municipality" insert "or other entit operating a sewage system". Meloy moved adoption, carried unanimous Included in that amendment was striking "shall" and inserting "may".
7. More municipalities after which add the wordage in amendment 6 are found on page 22, lines 13, 14, 22, 12; page 23, lines 2, 7, 14; page 24, line 4.
8. On page 23, lines 17 and 22, replace commission with board in line 17 and department in line 22; also on page 24, line 5, replace department with board. Meloy moved and motion carried unanimously.
9. On page 24, lines 10 through 14, strike the material. Rep. Melo moved the amendment be adopted. Motion carried unanimously.

Rep. Jim Moore moved the bill as amended do pass. Motion carried with Rep. Schye voting no.

Meeting adjourned at 11:55 p. m.

Dorothy Bradley, Chairman

eas

Also signing as opposing HB 667 were:
Robert P. Gannen, Montana Power
Senator C. R. Thiessen

44th LEGISLATIVE SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

House BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CURRED DATE
357	2-18-75	3-6,	3-6-75				3-6-75		
360	2-25-75	3-6-75	3-6-75				3-6-75		
370	2- 27-75	3-20-75	3-25-75					3-25-75	
386	2-18-75	3-11	3-11-75				3-11-75		
414	2-26-75	3-18-75	3-18-75						3-18-75
434	2-25-75	3-18-75	3-22-75					3-22-75	
445	2-25-75	3-19-75	3-22-75				3-22-75		
446	3-4-75	3-11-75	3-11-75					3-11-75	
460	3-4-75	3-20-75	3-22-75					3-22-75	
504	3-4-75	3-13-75	3-13-75				3-13-75		
509	2-27-75	3-13-75	3-13-75				3-13-75		
517	2-26-75	3-19-75	3-25-75				3-25-75		
519	3-4-75	3-20-75	3-22-75					3-22-75	
592	2-27-75	3-20-75	3-22-75						3-22-75
671	3-4-75	3-19-75	3-25-75				3-25-75		

Mr. Dan Dierdahl rose as a proponent from the Pharmaceutical Association.

There were no opponents.

Mr. Vern Sloulin was asked why the federal regulations couldn't attend to any violations regarding hazardous substances. He explained that there are only 4 federal safety officials for a six state area.

He also explained that there is a very open line of communication between manufacturers and safety officials.

Mr. McAfee explained that no commercial products are included under this act; they come under the OSHA act.

Mr. Sloulin told Senator Colberg that pottery, which is leaded, which comes from out of the states, would come under the Food and Drug Administration.

He also said this act is taken from the hazardous substances act and was refined to fit Montana Law.

CONSIDERATION OF HOUSE BILL NO. 370: An act generally revising the water pollution control laws to conform with federal requirements, to improve enforcement procedures, and to provide for user charges for industrial and other users of public sewage treatment systems; amending several sections.

Representative Meloy presented this bill to the committee and said it is presently administered by the Department of Health and is a water quality bill. He said certain aspects required changes.

As he could not be present for the subsequent testimony, he introduced Mr. Richard Klinger from the Department of Health and Environmental Sciences, who went through the bill and explained the first five sections were housekeeping bills.

He said subsection 4 on page 10 was revised to provide that water is kept at its best, not allowed to get to the degradatory level.

He also offered several other amendments. (See Attached).

Mr. Sternhagen rose, not as an opponent, but felt the offered amendment on page 15, line 7 should be taken out (namely, "on its own initiative")

Mr. Klinger voiced opposition to this suggestion in discussion.

The meetin on HB 370 was then adjourned.

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

March 25, 1975

The twenty-eighth meeting of the Public Health, Welfare and Safety Committee was called to order by Chairman Norman on the above date in Room 405 of the State Capitol Building at approximately 11:00 a.m.

ROLL CALL: All members were present except Senator Colberg.

ACTION ON HOUSE BILL NO. 370: It was moved by Senator Lee that the new sections 16 and 17 offered by Mr. Klinger be accepted. Senator Stephens said there was some vagueness as to what would be considered a large industrial user. In the roll call vote 4 senators were in favor and 3 were against Senator Lees motion thus the motion carried.

It was moved by Senator Seibel that an amendment to page 18, section 10, lines 9 through 11, following "if" be inserted to read as in Amendment 2 on the Standing Committee Report. (See Attached).

Senator Olson moved we strike "on its own initiative" on page 15, line 7 following, "action". This motion carried with four voting for the motion and 3 voting against.

Senator Lee moved HB 370 BE CONCURRED IN AS AMENDED. 4 voted in favor of the motion and three voted against.

CONSIDERATION OF HOUSE BILL NO. 517: This bill if passed would put non-profit and profit agencies under the same basic guidelines and would allow the profit agencies to come under federal funding and Medicare.

Senator Blaylock moved HB 517 BE CONCURRED IN. All present were in favor of the motion.

CONSIDERATION OF HOUSE BILL NO. 671: Senator Lee moved HB 671 BE CONCURRED IN. All voted in favor of the motion.

Bill Norman
BILL NORMAN, CHAIRMAN

BN:vm

STANDING COMMITTEE REPORT

March 25 19 75

MR. PRESIDENT

We, your committee on PUBLIC HEALTH, WELFARE AND SAFETY

having had under consideration House Bill No. 370

Respectfully report as follows: That House Bill No. 370

third reading bill (blue) be amended as follows:

1. Amend title, line 9,
   Following: "SECTIONS"
   Insert: "16-4412, 16-4526,"

2. Amend page 18, section 10, lines 9 through 11.
   Following: "if"
   Strike: "it is requested by the owner or operator and if it is found by the board to be a trade secret."
   Insert: "so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret, if he wishes such information to enjoy confidential status. The department shall be served in any such action, and may intervene as a party therein."

3. Amend page 24, section 15, line 17.
   Following: "line 17
   Insert: "Section 16. Section 16-4412, R.C.M. 1947, is amended to read as follows:

   "16-4412. Federal funds for local public works programs. The board of county commissioners are hereby authorized

DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

to apply for, and receive from, the federal government on behalf of said metropolitan sanitary and/or storm sewer district, any moneys that may be appropriated by the Congress for aiding in local public works projects, and likewise the board of county commissioners may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects, and repay the same out of the moneys received from the tax levy provided for in this act.

Notwithstanding any other section of this chapter, or limitation imposed therein, and when the board has applied pursuant to this section, the board may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance and replacement, and to require industrial users of treatment works to pay that portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial users' wastes."

Section 17. Section 16-4526, R.C.M. 1947, is amended to read as follows:

"16-4526. Rate to pay operating expenses. The board of directors in the furnishing of water, sewer service, other services and facilities, shall fix such rate, fee, toll, rent or other charge as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and, so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due.

Notwithstanding any other section of this chapter, or limitation imposed therein, and when the board of directors has applied for and received from the federal government any moneys for the construction, operation and maintenance of treatment services and works, the board of directors may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance and replacement, and to require industrial users of treatment works to pay the portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial users' wastes."

AND AS SO AMENDED, BE CONCURRED IN

BM:vm

BILL NORMAN, CHAIRMAN

HOUSE BILL NO. 370

INTRODUCED BY MELOY

(BY REQUEST, DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES)

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER POLLUTION CONTROL LAWS TO CONFORM WITH FEDERAL REQUIREMENTS, TO IMPROVE ENFORCEMENT PROCEDURES, AND TO PROVIDE FOR USER CHARGES FOR INDUSTRIAL AND OTHER USERS OF PUBLIC SEWAGE TREATMENT SYSTEMS; AMENDING SECTIONS 16-4412, 16-4526, 69-4801, 69-4802, 69-4806, 69-4807.1, 69-4808.2, 69-4809.1, 69-4809.2, 69-4820, 69-4820.1, 69-4822, 69-4823, 69-4825, AND 69-4826, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4801, R.C.M. 1947, is amended to read as follows:

"69-4801. Public policy of the state. (1) It is the public policy of this state to:

(a) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(b) provide a comprehensive program for the prevention, abatement, and control of water pollution.

REFERENCE BILL

(2) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream as long as the minimum treatment requirements established under this chapter are met. "Natural" refers to conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams at the effective date of this act are "natural.""

Section 2. Section 69-4802, R.C.M. 1947, is amended to read as follows:

"69-4802. Definitions. Unless the context requires otherwise in this chapter:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present;

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes,

offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances ~~that may pollute state waters;~~ THAT MAY POLLUTE STATE WATERS; ~~resulting from industrial, municipal, or agricultural activities;~~

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health;

(5) "Pollution" means contamination, or other alteration of the physical, chemical, or biological properties of any state waters, which exceeds that permitted by Montana water quality standards, including, but not limited to, standards relating to change in temperature, taste, color, turbidity, or odor~~;~~ or discharge of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is ~~permitted by Montana water quality standards~~ authorized under the pollution discharge permit ~~regulations~~ RULES of the board is not "pollution" under this chapter.

(6) "Sewerage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an

ultimate disposal point;

(7) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes;

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes, and includes sewerage systems and treatment works;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters;

(10) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity;

(11) "Council" means the state water pollution control advisory council provided for in section 82A-607;

(12) "Board" means the board of health and environmental sciences, provided for in section 82A-605;

(13) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6;

(14) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health;

(15) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(16) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source;

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(18) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constitutents which are discharged into state waters."

Section 3. Section 69-4806, R.C.M. 1947, is amended to read as follows:

"69-4806. Pollution unlawful--permits. It is unlawful to:

(1) cause pollution as defined in section 69-4802 (5), R. C. M. 1947, of any state waters or to place or cause to

be placed any wastes in a location where they are likely to cause pollution of any state waters;

(2) carry on any of the following activities without a current permit from the department~~:~~:

(a) construct, modify, or operate a disposal system which discharges to any state waters; or

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes to any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters; or

(3) violate any limitation imposed by a current permit."

Section 4. Section 69-4807.1, R.C.M. 1947, is amended to read as follows:

"69-4807.1. Denial, modification, suspension, and revocation of permit--notice--hearing--effective date. (1) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder, and he may request a hearing before the board, in the manner stated in section 13 [69-4820] of this act, for the purpose of petitioning the board to reverse or modify the action of the department. Such hearing shall be held within thirty (30) days after receipt of written request. After the hearing, the board

shall affirm, modify, or reverse the action of the department. Modification of a permit shall be effective thirty (30) days after receipt of notice by the holder, unless the department specifies a later date, if the holder does not request a hearing before the board. If the holder does request a hearing before the board, no order modifying his permit shall be effective until twenty (20) days after he has received notice of the action of the board. This subsection does not apply to any modification made in permit conditions at the time of reissuance but only to those modifications made in existing permits during their terms.

(2) If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately, if the department finds that the violation is likely to continue and will cause pollution the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in section 13 [69-4820] of this act and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately, unless the board directs otherwise."

Section 5. Section 69-4808.2, R.C.M. 1947, is amended

to read as follows:

"69-4808.2. Duties of board. (1) The board shall:

(a) Establish and modify the classification of all waters in accordance with their present and future most beneficial uses.

(b) Formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention.

(c) Review from time to time, at intervals of not more than three (3) years, established classifications of waters and standards of water purity and classification, and:

(i) The classifications, standards, and rules which have been adopted by the state water pollution control council under section 69-4813 are, without necessity of a hearing, initially adopted by the board.

(ii) In revising classifications or standards or in adopting new classifications or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted by the state water pollution control council under section 69-4813.

(iii) The board shall require that any state waters, whose existing quality is ~~better~~ higher than the established

water quality standards, ~~as--of--the--date--on--which-the standards--become--effective~~ be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

(iv) The board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increased source of pollution to high quality waters, referred to in subsection (1) (c) (iii), to provide the degree of waste treatment necessary to maintain that existing high water quality.

(d) Advise, consult, and co-operate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

(e) Adopt rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems.

(f) Adopt rules governing the issuance, denial, modification, or revocation of permits, and:

(i) The rules shall allow the issuance or continuance of a permit only if the department finds that operation

consistent with the limitations of the permit will not result in pollution of any state waters, except that:

(ii) The rules may allow the issuance of a temporary permit under which pollution may result, ~~for-a-period-no longer-than-three-(3)-years-and-subject-to-no-extension,~~ if the department ~~finds-that-the-issuance-of-a-permit-is-proper for--obtaining--compliance--with--the--applicable-standards,~~ insures that such permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(iii) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and

~~(iv)--A--person--introducing--a-new-source-or-increased source-of-sewage,--industrial--waste,--or--other--wastes--as defined--in-section-69-4802-(1),-(2),-and-(3),-to-waters-and tributaries-of-waters-classified-as-A-open-B-1-or-higher--by the--board--shall--be--required--to-install-and-maintain-the highest-and-best-degree--of--treatment--works--necessary--to maintain--adequately--this--classification,--as--defined--in section-69-4802-(7)-before-the-issuance-of-a-permit--by--the~~

~~department.~~

(g) Hold hearings necessary for the proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the department.

(h) Adopt rules for the administration of this chapter.

(i) Adopt pretreatment standards for waste-water discharged into a municipal disposal system, adopt effluent standards as defined in section 69-4802~~(20)~~, (18), adopt toxic effluent standards and prohibitions, and establish standards of performance for new point source discharges.

(2) The board may:

(a) accept loans and grants from the federal government and other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes."

Section 6. Section 69-4809.1, R.C.M. 1947, is amended to read as follows:

"69-4809.1. Duties of department. (1) The department shall:

(a) Issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes to state waters; consistently with rules made by the board;

(b) Examine ~~and approve or disapprove~~ plans and other information needed to determine whether a permit should be

issued or suggest changes in plans as a condition to the issuance of a permit;

(c) Clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged;

(d) Collect and furnish information relating to the prevention and control of water pollution;

(e) Conduct or encourage necessary research and demonstrations concerning water pollution;

(f) Issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them.

(g) Take such actions as are authorized or required under section 69-4820.1 to insure that the terms and conditions of issued permits are complied with and to insure that violations of this chapter are appropriately prosecuted."

Section 7. Section 69-4809.2, R.C.M. 1947, is amended to read as follows:

"69-4809.2. Power to inspect and monitor--authority. (1) In order to carry out the objectives of this act and to effectively monitor the discharge of sewage, industrial wastes and other wastes into state waters, the department

may require the owner or operator of any point source, or the owner or operator of any facility that discharges into a municipal sewer system and to which pretreatment standards, promulgated under this chapter apply, to:

(a) establish and maintain records;

(b) make reports;

(c) install, use and maintain monitoring equipment or methods, including biological monitoring techniques;

(d) sample effluents using specified monitoring methods at designated locations and intervals;

(e) provide other information as may be reasonably required by the department.

(2) The authorized representative of the department, ~~upon--presentation-of-his-credentials,~~ UPON PRESENTATION OF HIS CREDENTIALS, may at reasonable times enter upon any public or private property to:

(a) investigate conditions relating to pollution of state waters or violations of permit conditions;

(b) ~~and~~ have access to and copy any records required under this act;

(c) inspect any monitoring equipment or method required under subsection (1)(c); and

(d) sample any effluents which the owner or operator of such source is required to sample under that subsection.

(3) Any records, reports, or information obtained under

this section shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards."

Section 8. Section 69-4820, R.C.M. 1947, is amended to read as follows:

"69-4820. Violation of chapter or rule--notice to violator--hearing before board--notice, procedure, order, rehearing. (1) When the department has reason to believe that a violation of this chapter or a rule made under it has occurred, it ~~shall~~ may have written notice served personally or by mail on the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action which the department requires, and the time within which the action is to be taken. For the purposes of this chapter, service by mail is complete on the date of mailing.

(2) In a notice given under subsection (1) of this section, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges made against him. The hearing shall be held no sooner than fifteen (15) days after service of the notice, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the

alleged violator if the alleged violator shows good cause for delay.

(3) If the department does not require an alleged violator to appear before the board for a public hearing, he may request the board to conduct the hearing. The request shall be in writing and shall be filed with the department no later than thirty (30) days after service of a notice under subsection (1) of this section. If a request is filed, a hearing shall be held within a reasonable time.

(4) If a hearing is held under this section, it shall be public and shall, if the board considers it practicable, be held in a county in which the violation is alleged to have occurred.

(5) After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board may issue an appropriate order for the prevention, abatement, or control of pollution. It shall state the date or dates by which a violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. The alleged violator may petition the board for a rehearing, on the basis of new evidence, which petition the board may grant for good cause shown.

(6) In addition to or instead of issuing an order, the board may direct the department to initiate appropriate

action for recovery of a penalty under section 69-4823."

Section 9. Section 69-4820.1, R.C.M. 1947, is amended to read as follows:

"69-4820.1. Additional enforcement remedies. (1) In addition to all other remedies created by this act, the department is authorized to take appropriate enforcement action on its own initiative to:

(a) prevent, abate, and control the pollution of state waters;

(b) prevent, abate, and control any violation of a condition or limitation imposed by a permit issued under section 69-4806, R.C.M. 1947;

(c) prevent, abate, and control any violations of regulations relating to pretreatment standards.

(2) ~~Any~~ In furtherance of subsection (1) of this section, any person violating ~~a~~ any condition, limitation, standard or other requirement established pursuant to this ~~section~~ chapter may be served with a compliance order issued by the department. Such order must specify the condition, limitation, standard or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard or other requirement that has been violated. The

compliance order issued under this section shall be personally served by an authorized ~~employee~~ REPRESENTATIVE of the department.

(3) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for any violation which would be subject to a compliance order under subsection (2) of this section. Any action under this subsection may be commenced in the district court of any county in which the defendant is located or resides or is doing business, and the court shall have jurisdiction to restrain such violation and to require compliance.

(4) Any person found to be in violation of a condition, limitation, standard or other requirement established pursuant to this section shall be subject to the penalty provisions of section 69-4823, R.C.M. 1947.

(5) For the purpose of this subsection, the term "person" shall mean, in addition to the definition contained in section 69-4802, R.C.M. 1947, any responsible corporate officer."

Section 10. Section 69-4822, R.C.M. 1947, is amended to read as follows:

"69-4822. Confidentiality of records. Any information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them

is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, ~~tend--to weaken-his-competitive-position-shall-be-confidential-unless he--expressly--agrees--to-its-publication-or-availability-to the-general-public-or-unless-such-information-is--introduced as--evidence-in-a-hearing-before-the-board~~ reveal methods or processes entitled to protection as trade secrets, shall be maintained as confidential if ~~it-is-requested-by-the-owner or-operator-and-if-it-is-found-by-the-board-to--be--a--trade secret;~~ SO DETERMINED BY A COURT OF COMPETENT JURISDICTION. THE OWNER OR OPERATOR SHALL FILE A DECLARATORY JUDGMENT ACTION TO ESTABLISH THE EXISTENCE OF A TRADE SECRET, IF HE WISHES SUCH INFORMATION TO ENJOY CONFIDENTIAL STATUS. THE DEPARTMENT SHALL BE SERVED IN ANY SUCH ACTION, AND MAY INTERVENE AS A PARTY THEREIN. Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential; ~~---except---that---the---party---supplying--the information--to--the--board--may--apply--to--the--board--for confidential-status-for-the-information-so-supplied,-and-the board---shall---determine---that---the--disclosure--of--said information--is--in--the--public--interest--prior---to---the~~

~~disclosure to the public of said information~~. The board may use any information in compiling or publishing analyses or summaries relating to water pollution, if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section."

Section 11. Section 69-4823, R.C.M. 1947, is amended to read as follows:

"69-4823. Penalties for violation of provisions, rule, permit, effluent standard, or order--purpose and construction of chapter. (1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this act shall be ~~guilty--of an--offense--and~~ subject to a civil penalty not to exceed ten thousand dollars ($10,000). Each day of violation constitutes a separate ~~offense~~ VIOLATION.

(2) A person who willfully or negligently violates section 69-4806, R.C.M. 1947, or any pretreatment standard established pursuant to this act is guilty of an offense and subject to a fine not to exceed twenty-five thousand dollars ($25,000) per day of violation or by imprisonment for not more than one (1) year or both. Following an initial conviction under this subsection, subsequent convictions shall subject a person to a fine of not more than fifty thousand dollars ($50,000) per day of violation, or

imprisonment for not more than two (2) years, or both.

(3) Action under subsection (1) of this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy. The department shall institute and maintain any enforcement proceedings in the name of the state.

(4) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters. This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(5) Fines collected shall be deposited to the state general fund.

(6) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this act or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this act shall upon conviction be punished by a fine of not more than ten

thousand dollars ($10,000), or by imprisonment for not more than six (6) months, or both.

(7) In a civil action initiated by the department under this act, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation, and any expense incurred by the state in removing, correcting or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants."

Section 12. Section 69-4825, R.C.M. 1947, is amended to read as follows:

"69-4825. Injunctions. The department may bring an action for an injunction against the continuation of an alleged violation ~~which has been the basis of suspension or revocation~~ of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under section 69-4824 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction, if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction."

Section 13. Section 69-4826, R.C.M. 1947, is amended to read as follows:

"69-4826. Action by other parties. A person, association, corporation, or agency of the state or federal government may apply to the department protesting a violation of this chapter. The department shall make an investigation and make a written report to the person, association, corporation, or agency which made the protest. If a violation is established by the investigation of the department, appropriate enforcement action shall be taken."

Section 14. There is a new R.C.M. section that reads as follows:

Rates and charges to meet costs of treatment works--use of funds--enforcement. (1) A municipality ~~shall~~ OR OTHER ENTITIES OPERATING A SEWAGE SYSTEM MAY adopt a system of charges and rates to assure that each recipient of treatment works services within the municipality's jurisdiction or service area will pay its proportionate share of the costs of operation, maintenance, and replacement of any treatment works facilities or services provided by the municipality OR OTHER ENTITIES OPERATING A SEWAGE SYSTEM.

(2) A municipality OR OTHER ENTITIES OPERATING A SEWAGE SYSTEM may require industrial users of its treatment works to pay to the municipality OR OTHER ENTITIES OPERATING A SEWAGE SYSTEM that portion of the cost of construction of

the treatment works which is allocable to the treatment of such industrial user's wastes. The department of health and environmental sciences may determine whether the payment required of the industrial user for the portion of the cost of the construction of the treatment works is properly allocable to the treatment of the industrial user's wastes.

(3) A municipality OR OTHER ENTITIES OPERATING A SEWAGE SYSTEM may retain the amounts of the revenues derived from the payment of costs by industrial users of its treatment works services and expend such revenues, together with interest thereon, for:

(a) repayment to applicable agencies of government of any grants or loans made to the municipality OR OTHER ENTITIES OPERATING A SEWAGE SYSTEM for construction of the treatment works; and

(b) future expansion and reconstruction of the treatment works; and

(c) other municipal purposes.

(4) A municipality OR OTHER ENTITIES OPERATING SEWAGE SYSTEMS shall keep records, financial statements and books regarding its rates and charges and amounts collected on account of its treatment works and how such revenues are allocated. The department may inspect such records, financial statements and books, audit them, or cause them to be audited, at such intervals as deemed necessary.

(5) In the event a municipality OR OTHER ENTITIES OPERATING SEWAGE SYSTEMS fails, neglects or refuses when required by the department to adopt the system of charges and rates authorized by this section, the ~~commission~~ BOARD may adopt a system of charges and rates as provided for in subsection (1) of this section and collect, administer and apply such revenues for the purposes of subsection (3) of this section.

(6) In lieu of proceeding in the manner set forth in subsection (5) of this section, the ~~commission~~ DEPARTMENT may institute proceedings at law or in equity to enforce compliance with, or restrain violations of this section.

Section 15. There is a new R.C.M. section that reads as follows:

Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality OR OTHER ENTITIES OPERATING SEWAGE SYSTEMS or, if applicable, the ~~department~~ BOARD shall consider the strength, volume, types and delivery flow rate characteristics of the waste; the nature, location and type of treatment works; the receiving waters; and such other factors as deemed necessary.

SECTION 16. SECTION 16-4412, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"16-4412. Federal funds for local public works

programs. The board of county commissioners are hereby authorized to apply for, and receive from, the federal government on behalf of said metropolitan sanitary and/or storm sewer district, any moneys that may be appropriated by the Congress for aiding in local public works projects, and likewise the board of county commissioners may borrow from the federal goverment any funds available for assisting in the planning or financing of local public works projects, and repay the same out of the moneys received from the tax levy provided for in this act.

Notwithstanding any other section of this chapter, or limitation imposed therein, and when the board has applied pursuant to this section, the board may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance and replacement, and to require industrial users of treatment works to pay that portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial users' wastes."

SECTION 17. SECTION 16-4526, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"16-4526. Rate to pay operating expenses. The board of directors in the furnishing of water, sewer service, other services and facilities, shall fix such rate, fee, toll,

rent or other charge as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and, so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due.

Notwithstanding any other section of this chapter, or limitation imposed therein, and when the board of directors has applied for and received from the federal government any moneys for the construction, operation and maintenance of treatment services and works, the board of directors may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance and replacement, and to require industrial users of treatment works to pay the portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial users' wastes."

~~Section 16. There is a new R.C.M. section that reads as follows:~~

~~Rules. The department may adopt, modify or repeal rules for the administration and implementation of sections 14 and 15 of this act).~~

-End-